6. THE PRESIDENT OF THE REPUBLIC

6.1. THE CONSTITUTIONAL STATUS OF THE PRESIDENT OF THE REPUBLIC

The immunity of the President of the Republic (Article 86 of the Constitution)

The Constitutional Court's ruling of 8 May 2000

Paragraph 1 of Article 86 of the Constitution prescribes:

"The person of the President of the Republic shall be inviolable: while in office, he may be neither detained nor held criminally or administratively liable."

[…]

[By this provision of Paragraph 1 of Article 86 of the Constitution] the immunity of the President of the Republic … [is] established. Immunity means additional guarantees for the protection of the inviolability of the respective person where such guarantees are necessary and indispensable for the proper performance of the duties of the said person. The immunity of the President of the Republic as the Head of State … must ensure that the President of the Republic … might perform the functions established in the Constitution without hindrance and that the officials of executive power could be precluded from exerting the possible adverse influence on the President of the Republic … . …

[…]

Paragraph 1 of Article 86 of the Constitution provides that, while in office, the President of the Republic may be neither detained nor held criminally or administratively liable. Consequently, while the President of the Republic is in office, his/her immunity is very broad, i.e. his/her right of immunity may be subject to limitations only after he/she ceases to perform his/her duties. On the other hand, immunity is limited in time: immunity is applied from the moment when the President of the Republic takes office and expires when he/she loses his/her duties as the President of the Republic. It needs to be emphasised that the Constitution provides for the constitutional responsibility of the President of the Republic: if he/she is found to have committed a gross violation of the Constitution, to have breached the oath of office, or to have committed a crime, he/she may be removed from office by the Seimas through impeachment proceedings (Paragraph 2 of Article 86 of the Constitution) and then his/her right of the inviolability of his/her person may be limited on the same grounds and in accordance with the same procedure as the said right of other persons.

[…]

As mentioned before, the immunity of the President of the Republic is very broad while he/she is in office. The content of immunity is composed of the following: while in office, the President of the Republic may not be subjected to criminal prosecution as he/she may not be held criminally liable; any measures (save impeachment proceedings) that might create the conditions for initiating criminal prosecution against the President of the Republic are prohibited. Thus, the conclusion should be drawn that no forms of operational activities, including a criminal conduct simulation model, may be applied against the President of the Republic.

The constitutional status of the President of the Republic as the Head of State (Article 77 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

Paragraph 1 of Article 77 of the Constitution provides that the President of the Republic is the Head of State. Interpreting Article 77 of the Constitution, in its ruling of 8 May 2000, the Constitutional Court held that "the status of the Head of State is acquired for the period established in the Constitution only by one person, i.e. the President of the Republic, who is elected by citizens of the Republic of Lithuania. The legal

status of the President of the Republic as the Head of State is individual and different from that of all other citizens". Under the Constitution, the legal status of the President of the Republic as the Head of State is different from that of the rest of state officials (the ruling of 19 June 2002).

In its ruling of 19 June 2002, the Constitutional Court also held that the individual and exceptional legal status of the President of the Republic as the Head of State is revealed in various provisions of the Constitution, which consolidate: the inviolability of the President of the Republic; the impossibility for the President of the Republic to be a member of the Seimas, to hold another office, and to receive remuneration other than remuneration established for the President of the Republic and remuneration for creative activities; the duty of a person elected as the President of the Republic to suspend his/her activities in political parties and political organisations; the requirements for candidates seeking the office of the President of the Republic; the grounds and procedure for the election of the President of the Republic; the oath of the President of the Republic; the powers of the President of the Republic, their commencement and cessation etc.

Under Paragraph 2 of Article 77 of the Constitution, the President of the Republic represents the State of Lithuania.

It should be noted that the State of Lithuania is created by the Nation; sovereignty belongs to the Nation (Article 2 of the Constitution). Article 4 of the Constitution provides that "The Nation shall execute its supreme sovereign power either directly or through its democratically elected representatives". Under Paragraph 1 of Article 55 of the Constitution, members of the Seimas are representatives of the Nation. Thus, only the Seimas is the representation of the Nation.

As mentioned before, the President of the Republic is the Head of State and represents the State of Lithuania. Although representing the Nation and representing the State must not be opposed, however, representing the Nation and representing the State are not identical legal categories: the said categories have the legal content characterised by individual features.

The oath of the President of the Republic (Paragraph 1 of Article 82 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

Paragraph 1 of Article 82 of the Constitution consolidates the provision that the elected President of the Republic takes office only after he/she takes an oath to the Nation.

In view of the fact that the representatives of the Nation, members of the Seimas, sit in the House of the Seimas, the phrase "in Vilnius, in the presence of the representatives of the Nation – the Members of the Seimas" of Paragraph 1 of Article 82 of the Constitution implies that the elected President of the Republic must take an oath specifically in the House of the Seimas, which, under the Constitution, must be only in Vilnius, the capital of the Republic of Lithuania.

Paragraph 1 of Article 82 of the Constitution establishes the content of the oath of the elected President of the Republic to the Nation: the elected President of the Republic must take an oath to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his/her office, and to be equally just to all.

It needs to be emphasised that the oath of the elected President of the Republic reflects the main values enshrined in the Constitution – the Nation links such values with the office of the President of the Republic.

[…]

It needs to be noted that the oath of the elected President of the Republic is different from the oath taken by a member of the Seimas, by the Prime Minister and ministers, by a justice of the Constitutional Court, or by a judge of another court. The elected President of the Republic is the only person indicated in the Constitution who takes an oath to the special entity to whom sovereignty belongs: the elected President of the Republic takes an oath to the Nation. The oath of the elected President of the Republic has the characteristic difference, according to which, the oath of the elected President of the Republic to the Nation reflects the most important and universal constitutional values: while in office, the President of the Republic cannot deviate from the said values; these constitutional values are inseparable from one another; the content

of these values is very voluminous, comprising numerous other constitutional obligations, which are of no less importance.

The oath of the elected President of the Republic is not a mere formal or symbolic act. In view of the fact that the institute of the oath of the President of the Republic and the content of such an oath are established in the Constitution, the oath of the President of the Republic has a constitutional significance and gives rise to constitutional legal effects.

The provisions of Paragraph 1 of Article 82 of the Constitution that, on the day following the expiry of the term of office of the President of the Republic, the elected President of the Republic takes office after he/she takes an oath to the Nation mean that, as long as the elected President of the Republic has not taken an oath to the Nation, he/she cannot take office. The elected President of the Republic takes office precisely at the moment after he/she takes an oath to the Nation.

The action of the oath of the elected President of the Republic is also legally significant due to the fact that, from the moment that the elected President of the Republic takes an oath, the powers of the former President of the Republic cease.

It needs to be noted that, under the Constitution, any refusal of the elected President of the Republic to take an oath to the Nation in the Seimas at the time prescribed by the Constitution, or taking an oath with reservations or changing the text of the oath, as well as any refusal of the elected President of the Republic to sign the text of the oath, means that the elected President of the Republic may not take office and that a new election of the President of the Republic must be called.

The action of the oath of the President of the Republic is also legally significant due to the fact that, from the moment of taking an oath, the duty arises for the President of the Republic to act only in such a way as he/she is obliged by the oath taken to the Nation. A breach of the oath constitutes one of the grounds on which the President of the Republic may be removed from office through impeachment proceedings (Article 74 of the Constitution). It needs to be noted that a breach of the oath is also a gross violation of the Constitution, while a gross violation of the Constitution is also a breach of the oath.

The duty of the President of the Republic to be equally just to all (Paragraph 1 of Article 82 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

… under Article 82 of the Constitution, the elected President of the Republic must take an oath to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his/her office, and to be equally just to all.

The requirement consolidated in Paragraph 1 of Article 82 of the Constitution, according to which the President of the Republic must be equally just to all, should be interpreted by taking into consideration the provision of Paragraph 1 of Article 29 of the Constitution, whereby all persons are equal before the law, courts, and other state institutions and officials.

[…]

The requirement that the President of the Republic must be equally just to all, which is established in Paragraph 1 of Article 82 of the Constitution, in conjunction with the provision of Paragraph 2 of Article 77 of the Constitution, whereby the President of the Republic performs everything with which he/she is charged by the Constitution and laws, means that the President of the Republic, while implementing the powers established for him/her in the Constitution and laws, must follow only the Constitution and laws and must not violate them, that the President of the Republic must act only in the interests of the Nation and the State of Lithuania, that the President of the Republic, while implementing the powers established for him/her in the Constitution and laws, cannot act by pursuing such aims and interests that are inconsistent with the Constitution and laws or with public interests. The constitutional requirement that the President of the Republic must be equally just to all obligates him/her to act in such a manner that would prevent a conflict between the interests of the President of the Republic as a private person on the one hand, and, on the other

hand, his/her constitutional duty that he/she as the Head of State must represent the State of Lithuania and act only in the interests of the Nation and the State of Lithuania.

The provision of Paragraph 1 of Article 82 of the Constitution, according to which the President of the Republic must be equally just to all, in conjunction with the provision of Article 29 of the Constitution, whereby all persons are equal before state institutions and officials, means not only that the President of the Republic has the duty to treat equally all persons for whom the respective legal provision is meant, but also that the President of the Republic has the duty to apply this legal norm equally an justly to all persons. The provision of Paragraph 1 of Article 29 of the Constitution, according to which all persons are equal before state institutions and officials, and the provision of Paragraph 1 of Article 82, whereby the President of the Republic must be equally just to all, cannot be interpreted as meaning that, **purportedly**, according to these provisions, the President of the Republic would be equally just to all in situations where a certain legal norm is applied to all persons equally unjustly. Such an interpretation of the said provisions of Paragraph 1 of Article 29 and Paragraph 1 of Article 82 of the Constitution would not be in line with the constitutional principles of a state under the rule of law and justice on which the Constitution itself and the entire legal system of Lithuania are based.

… as such, the mere fact that a decree of the President of the Republic is declared in conflict with the Constitution or a law does not mean that the President of the Republic has grossly violated the Constitution, or breached the oath, or committed a crime. Deciding whether the President of the Republic, having issued a decree that is in conflict with the Constitution or a law, has grossly violated the Constitution, or breached the oath, or committed a crime, it is necessary to assess not only the content of the decree of the President of the Republic, but also whether, in the course of issuing the decree of the President of the Republic, the requirements established in the Constitution and the relevant laws were fulfilled and whether the established procedure was followed; in addition, it is also necessary to assess other factual circumstances surrounding the issuance of such a decree.

It needs to be noted that a violation of Paragraph 1 of Article 29 of the Constitution is in all cases a violation of the principle of the formal equality of persons. Meanwhile, the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, consolidates not only the duty of the President of the Republic not to violate the principle of the formal equality of persons, but also his/her duty not to act in the manner that, in the course of the implementation of the powers established for him/her in the Constitution and laws, the President of the Republic would knowingly treat not equally justly persons (their groups) with respect to whom he/she adopts decisions. Thus, the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, would not necessarily be violated in all cases when Paragraph 1 of Article 29 of the Constitution (the principle of the formal equality of persons) is violated, but only when the President of the Republic, while implementing the powers established for him/her in the Constitution and laws, knowingly acts in such a way that persons (their groups) with respect to whom the President of the Republic adopts decisions would not be treated equally justly.

Thus, as such, the mere fact that a decree of the President of the Republic is ruled to be in conflict with Paragraph 1 of Article 29 of the Constitution does not mean that, by issuing such a decree, the President of the Republic violated the provision of Paragraph 1 of Article 82 of the Constitution, according to which the President of the Republic must be equally just to all. While deciding whether, by issuing a decree that is in conflict with Paragraph 1 of Article 29 of the Constitution, the President of the Republic at the same time violated the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, it is necessary to assess not only the content of such a decree of the President of the Republic, but also the factual circumstances surrounding the issuance of such a decree.

The phrase “all persons shall be equal” of Paragraph 1 of Article 29 of the Constitution means that the principle of the equality before the law, the court, and other state institutions and officials must be applied not only to citizens of the Republic of Lithuania, but also to citizens of foreign states and stateless persons.

… the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, means that the President of the Republic must be equally just not only to citizens of the Republic of Lithuania who comprise the national community – the civil Nation, but also to all other persons, i.e. to citizens of foreign states and stateless persons with respect to whom the President of the Republic adopts decisions.

… if a law provides that citizenship of the Republic of Lithuania may be granted by way of exception to a citizen of a foreign state or a stateless person in recognition of merit to the Republic of Lithuania, this means that this requirement must be applied to all citizens of foreign states or stateless persons who request citizenship of the Republic of Lithuania granted by way of exception. If citizenship of the Republic of Lithuania were granted by way of exception to a citizen of a foreign state or a stateless person with no merit to the Republic of Lithuania, the principle of the equality of persons that includes the equality of persons before state institutions or officials, as consolidated in Paragraph 1 of Article 29 of the Constitution, as well as the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, would be disregarded.

If a law established the grounds under which citizenship of the Republic of Lithuania is not granted, the principle of the equality of all persons, as well as the constitutional imperative that the President of the Republic must be equally just to all, would require verification in all cases before the issuance of a decree of the President of the Republic on granting citizenship of the Republic of Lithuania (as well as on granting citizenship of the Republic of Lithuania by way of exception to citizens of foreign states or stateless persons in recognition of their merit to the Republic of Lithuania) whether there are any grounds, established in the law, that preclude granting citizenship of the Republic of Lithuania. Otherwise, the principle of the equality of persons, which is consolidated in Article 29 of the Constitution, as well as the provision of Paragraph 1 of Article 82 of the Constitution, whereby the President of the Republic must be equally just to all, would be disregarded.

The requirements established in Article 29 and Paragraph 1 of Article 82 of the Constitution would also be disregarded if the President of the Republic, when implementing the powers established for him/her in the Constitution and laws to grant citizenship of the Republic of Lithuania, would apply equally unjustly a legal norm addressed to all relevant persons (either to separate groups of persons or to individual persons).

It needs to be noted that the duty of the President of the Republic to be equally just to all, arising out of the Constitution, when he/she implements the powers, established for him/her in the Constitution and laws, to decide on citizenship issues has certain particularities. These particularities are determined by the fact that, under [the law], the President of the Republic has the right, but not the duty, to grant citizenship by way of exception to citizens of foreign states or stateless persons in recognition of their merit to the Republic of Lithuania: citizenship of the Republic of Lithuania may not necessarily be granted by way of exception even to a citizen of a foreign state or a stateless person with merit to the Republic of Lithuania. This is decided at the discretion of the President of the Republic. However, the circumstance that only the President of the Republic has the right to decide whether a citizen of a foreign state or a stateless person can be granted citizenship of the Republic of Lithuania by way of exception cannot be interpreted as meaning that the President of the Republic, when deciding whether to grant citizenship of the Republic of Lithuania to a citizen of a foreign state or a stateless person in recognition of merit to the Republic of Lithuania, may disregard the requirements established in the Constitution and [the law] and may clearly be partial and non-objective. Nor can the circumstance that, under [the law], the issues of granting citizenship of the Republic of Lithuania are decided by the President of the Republic at his/her discretion, be interpreted as meaning that, prior to issuing a decree on granting citizenship of the Republic of Lithuania by way of exception, the President of the Republic may apply the equal legal procedures established in the law to all persons in an unequal manner, or as meaning that, prior to issuing a decree on granting citizenship of the Republic of Lithuania, the President of the Republic does not have the duty to receive, from the institutions (their officials) preparing citizenship documents, the confirmation that all requirements established in [the law]

have been fulfilled (that all procedures established in [the law] have been accomplished) and that there are not any legal obstacles to issuing the respective decree of the President of the Republic.

Any unequal application of the equal legal procedures established to all persons in the law not only places in an unequal situation the citizens of foreign states or stateless persons that seek to be granted citizenship of the Republic of Lithuania by way of exception, but also means that all persons are not equal before the state institutions or their officials that, in an unequal manner, apply the equal legal procedures established to all persons in the law. If the President of the Republic, in an unequal manner, applies the equal legal procedures established to all persons in the law, he/she derogates from the constitutional requirement to be equally just to all.

The constitutional status of the President of the Republic as the Head of State (Article 77 of the Constitution)

The Constitutional Court's conclusion of 31 March 2004

Under Article 77 of the Constitution, the President of the Republic is the Head of State; the President of the Republic represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws. Interpreting Article 77 of the Constitution, in its rulings of 8 May 2000 and 19 June 2002, the Constitutional Court held that only one person acquires the status of the Head of State for the period defined in the Constitution, i.e. the President of the Republic who is elected by citizens of the Republic of Lithuania, and that the legal status of the President of the Republic as the Head of State is an individual one and different from that of the rest of state officials and that of the rest of citizens.

The exceptional legal status of the President of the Republic as the Head of State is revealed by various provisions of the Constitution, which establish the inviolability of the person of the President of the Republic, the prohibition on holding the President of the Republic criminally and administratively liable, the oath of the President of the Republic, his/her powers, the beginning and expiry of these powers, etc.

Under Paragraph 2 of Article 78 of the Constitution, the President of the Republic is elected for a five-year term. The powers of the President of the Republic may expire before the established time only on the grounds laid down in the Constitution. One of such grounds is when the Seimas removes the President of the Republic from office through impeachment proceedings (Item 5 of Article 88 of the Constitution).

It needs to be noted that the President of the Republic, while taking office, takes an oath to the Nation to be faithful to the Republic of Lithuania and the Constitution, to conscientiously fulfil the duties of his/her office, and to be equally just to all (Paragraph 1 of Article 82 of the Constitution). The oath of the elected President of the Republic reflects the main values enshrined in the Constitution – the Nation links such values with the office of the President of the Republic; these values are inseparable from one another; the President of the Republic, while in office, cannot deviate from the universal constitutional values of utmost importance to the Nation, which are consolidated in the oath of the President of the Republic. In its ruling of 30 December 2003, the Constitutional Court held that, from the moment of taking the oath, the duty arises for the President of the Republic to act only in such a way as he/she is obliged by the oath taken to the Nation, as well as that a breach of the oath constitutes one of the grounds established in the Constitution on the basis of which the President of the Republic may be removed from office through impeachment proceedings. In the said ruling, the Constitutional Court also held that a breach of the oath of the President of the Republic is also a gross violation of the Constitution, while a gross violation of the Constitution is also a breach of the oath.

Under Paragraph 2 of Article 77 of the Constitution, the President of the Republic represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws. The provision of Paragraph 2 of Article 77 of the Constitution, whereby the President of the Republic performs everything with which he/she is charged by the Constitution and laws, when account is taken of the content of the oath of the President of the Republic laid down in Paragraph 1 of Article 82 of the Constitution, means that the President of the Republic, when implementing the powers established for him/her in the Constitution and laws, must follow only the Constitution and laws and must not violate them, that the President of the

Republic must act only in the interests of the Nation and the state, that the President of the Republic may not act by pursuing such aims and interests that are inconsistent with the Constitution and laws, with the interests of the Nation and the state, or with public interests, that the President of the Republic may not promote personal or group interests over those of society and the state, and that he/she may not act in the manner that would discredit state authority.

It needs to be noted that the possibility consolidated in the Constitution to remove the President of the Republic from office through impeachment proceedings is a form of public democratic control over the activities of the President of the Republic, a manner of the constitutional responsibility of the President of the Republic before the Nation, and one of the means of the self-defence of democratic civil society against the abuse of authority by the President of the Republic. Under Article 74 of the Constitution, it is permitted to institute impeachment proceedings against the President of the Republic only for a gross violation of the Constitution, a breach of the oath, or if he/she is found to have committed a crime; only the Seimas may remove the President of the Republic from office and this is done in accordance with the procedure established in the Statute of the Seimas; the President of the Republic is removed from office only if not less than 3/5 of all the members of the Seimas vote for this.

[…]

The right to criticise state institutions or officials is a right of every citizen of the Republic of Lithuania, including state officials or politicians. It is clear that the President of the Republic also has this constitutional right.

It should be noted that, as such, criticism publicly expressed by the President of the Republic with regard to state institutions or officials or a negative assessment of their decisions should not be regarded as bringing discredit on the authority of the respective state institutions or officials. While assessing whether criticism publicly expressed by the President of the Republic with regard to state institutions or officials or a negative assessment of their decisions brings discredit on such institutions or officials, account should be taken of both the content of this criticism (negative assessment) and all circumstances under which such criticism (negative assessment) was made public.

At the same time, it needs to be emphasised that the President of the Republic is the Head of State; the President of the Republic represents the State of Lithuania. The President of the Republic is one of the institutions of state power. All activities of the President of the Republic must be based on respect for the state and for its all institutions of power. The constitutional status of the President of the Republic implies that, by expressing his/her public criticism against other state institutions or their officials, the President of the Republic has the duty to avoid both opposition between the branches of power and any unreasonable disparagement or unfounded denial of decisions taken by other branches of power. The exceptional constitutional status of the President of the Republic and his/her role in the state obliges him/her to choose proper and correct forms of expressing criticism. If these requirements were disregarded, the trust of the Nation in the institution of the President of the Republic itself would be degraded and the authority of this institution would be diminished.

The constitutional status of the President of the Republic as the Head of State (Article 77 of the Constitution)

The Constitutional Court's ruling of 25 May 2004

Under Article 77 of the Constitution, the President of the Republic is the Head of State; he/she represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws.

Interpreting Article 77 of the Constitution, in its ruling of 8 May 2000, the Constitutional Court held the following: "The status of the Head of State is acquired for the period established in the Constitution only by one person, i.e. the President of the Republic, who is elected by citizens of the Republic of Lithuania. The legal status of the President of the Republic as the Head of State is individual and different from that of all other citizens."

Under the Constitution, the legal status of the President of the Republic as the Head of State is an exceptional one and it differs from the legal status of all other state officials. The individual and exceptional constitutional legal status of the President of the Republic as the Head of State is revealed in various provisions of the Constitution, which consolidate: the inviolability of the person of the President of the Republic; the impossibility for the President of the Republic to be a member of the Seimas, to hold another office, and to receive remuneration other than remuneration established for the President of the Republic and remuneration for creative activities; the duty for the person elected as the President of the Republic to suspend his/her activities in political parties and political organisations until the beginning of a new election campaign for the post of the President of the Republic; the requirements for candidates seeking the office of the President of the Republic; the grounds and procedure for the election of the President of the Republic; the oath of the President of the Republic; the powers of the President of the Republic, their commencement and cessation, etc. (ruling of 19 June 2002).

The Constitution lays down considerable powers for the President of the Republic as the Head of State. Part of the constitutional powers of the President of the Republic, the Head of State, is linked with the possibility of forming other institutions that exercise state power and/or exerting influence on their activities, decisions adopted by them, and on the law-making process.

For instance, the President of the Republic has the right of legislative initiative at the Seimas (Paragraph 1 of Article 68 of the Constitution). The President of the Republic signs and officially promulgates adopted laws on the alteration of the Constitution (Paragraph 1 of Article 149 of the Constitution), laws adopted by the Seimas (Paragraph 1 of Article 70 of the Constitution), as well as laws adopted by referendum (Paragraph 3 of Article 71 of the Constitution). The President of the Republic has the right to refer, on reasonable grounds, a law adopted by the Seimas back to the Seimas for reconsideration (Paragraph 1 of Article 71 of the Constitution) and may submit amendments and supplements to a law (Paragraph 2 of Article 72 of the Constitution). Under Article 84 of the Constitution, the President of the Republic decides the basic issues of foreign policy and, together with the Government, conducts foreign policy (Item 1); signs international treaties of the Republic of Lithuania and submits them to the Seimas for ratification (Item 2); on the assent of the Seimas, appoints the Prime Minister; charges the Prime Minister with forming the Government; and approves the composition of the formed Government (Item 4); on the assent of the Seimas, releases the Prime Minister from duties (Item 5); appoints and releases ministers on submission by the Prime Minister (Item 9); proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, on the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints the judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties; on the assent of the Seimas, appoints and releases the Prosecutor General of the Republic of Lithuania (Item 11); proposes candidates for the posts of three justices of the Constitutional Court and, on the appointment of all the justices of the Constitutional Court, proposes the candidate from among them for the post of the President of the Constitutional Court to be appointed by the Seimas (Item 12); proposes candidates for the posts of the Auditor General and the Chairperson of the Board of the Bank of Lithuania for consideration by the Seimas; may submit that the Seimas express no confidence in them (Item 13); on the assent of the Seimas, appoints and releases the Commander of the Armed Forces and the Head of the Security Service (Item 14); confers the highest military ranks (Item 15); in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, adopts decisions concerning defence against the armed aggression, the imposition of martial law, as well as mobilisation, and submits these decisions for approval at the next sitting of the Seimas (Item 16); declares a state of emergency according to the procedure and in cases established by law and presents this decision for approval at the next sitting of the Seimas (Item 17); Paragraph 4 of Article 112 of the Constitution provides that the judges of district, regional, and specialised courts are appointed, and their

places of work are changed, by the President of the Republic. Under Paragraph 2 of Article 140 of the Constitution, the President of the Republic is the Commander-in-Chief of the Armed Forces of the State. The President of the Republic heads the State Defence Council (Paragraph 1 of Article 140 of the Constitution).

The Constitution also lays down other considerable powers for the President of the Republic as the Head of State: the President of the Republic may call an early election to the Seimas under the conditions established in Paragraph 2 of Article 58 of the Constitution (Paragraph 2 of Article 58 of the Constitution); the President of the Republic grants citizenship of the Republic of Lithuania according to the procedure established by law (Item 21 of Article 84 of the Constitution), confers state awards (Item 22 of Article 84 of the Constitution), grants pardons to convicted persons (Item 23 of Article 84 of the Constitution), etc.

As mentioned before, under the Constitution, the President of the Republic performs everything that he/she is charged with by the Constitution and laws. Various powers of the President of the Republic are established not only in the Constitution, but also in laws, which are adopted by the Seimas.

It is clear from the said provisions of the Constitution that the President of the Republic, the Head of State, also has such constitutional powers that enable him/her to exert significant influence on other institutions exercising state power, i.e. on the Seimas, which exercises legislative power, and on the Government, an institution of executive power; the President of the Republic, the Head of State, has also considerable powers in forming the judiciary. The functioning of the other institutions of state power not inconsiderably depends on how the President of the Republic, the Head of State, implements the powers established for him/her in the Constitution.

It needs to be noted that the Constitution gives rise to the duty of the President of the Republic, as the Head of State, while exercising the powers established for him/her in the Constitution and laws, to act in such a way that harmonic interaction among the institutions exercising state power would be maintained, that the citizens of the Republic of Lithuania, the national community, could trust in the institution of the President of the Republic, the Head of State, that the State of Lithuania would be properly represented in its relationships with other countries and international organisations, that the State of Lithuania would be able to duly fulfil its international obligations, and it would be ensured that other entities of international relationships (foreign states, international organisations, etc.) could duly fulfil their obligations to the State of Lithuania. The proper performance of the said constitutional duty of the President of the Republic, the Head of State, is an essential condition for the trust of citizens in the State of Lithuania itself, as the general good of all society, and in its institutions, as well as a condition for the trust of other entities of international relationships in the State of Lithuania.

Thus, when assessing the constitutional legal status of the President of the Republic, the Head of State, it needs to be noted that this status is not only the sum of the powers *expressis verbis* established for the President of the Republic in the Constitution. The President of the Republic, as the Head of State directly elected by the Nation, symbolises the State of Lithuania and the values of its society and personifies the Republic of Lithuania in international relationships.

The constitutional powers of the President of the Republic and the guarantees established for him/her in the Constitution, as well as the constitutional legal status of the President of the Republic as the Head of State, also imply his/her special responsibility for the national community – the civil Nation.

Requirements for persons eligible to stand for the election as the President of the Republic (Paragraph 2 of Article 34 and Paragraph 1 of Article 78 of the Constitution)

See 2. The constitutional status of persons, 2.3. Political rights and freedoms, 2.3.3. The electoral rights, the ruling of 25 May 2004.

The constitutional status of the President of the Republic (as part of dual executive power)

The Constitutional Court's ruling of 13 December 2004

The foundations of the system of the institutions of executive power, as well as the powers of the supreme institutions of executive power, are established in the Constitution. The constitutional order of the State of Lithuania is based on the model of dual executive power: executive power in Lithuania is exercised by the President of the Republic – the Head of State and by the Government.

The President of the Republic is part of executive power (rulings of 10 January 1998, 21 December 1999, and 30 December 2003). Article 77 of the Constitution provides that the President of the Republic is the Head of State (Paragraph 1); he/she represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws (Paragraph 2). The President of the Republic, implementing the powers vested in him/her, issues acts-decrees (Article 85 of the Constitution). It should be emphasised that, under Item 2 of Article 94 of the Constitution, the Government executes, *inter alia*, the decrees of the President of the Republic.

[…]

It should be mentioned that the powers of the President of the Republic and those of the Government, as two branches of dual executive power, are autonomous and independent of each other. On the other hand, the Constitution *expressis verbis* specifies such powers of the President of the Republic and those of the Government that should be jointly implemented by the President of the Republic and the Government. For instance, Article 85 of the Constitution, *inter alia*, prescribes: "To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister." According to Item 1 of Article 84 of the Constitution, the President of the Republic, *inter alia*, together with the Government, conducts foreign policy. It should also be noted that, while paying regard to the Constitution, the legislature may also provide, in a law, for such a legal regulation that certain state institutions would be established under the President of the Republic, the Head of State.

The social guarantees of the President of the Republic (Article 90 of the Constitution)

The Constitutional Court's ruling of 3 July 2014

The individual and exceptional constitutional status of the President – the Head of State – includes, as its inseparable part, the constitutional social guarantees of the President.

Article 90 of the Constitution provides that the President has a residence, as well as that the financing of the President and of his/her residence is established by law. In interpreting these provisions of Article 90 of the Constitution, in its ruling of 19 June 2002, the Constitutional Court held that:

– the provisions of Article 90 of the Constitution should be interpreted by taking account of the fact that, under the Constitution, the legal status of the President is individual and different from the status of all other state officials; these constitutional provisions mean that the activities of the President are financed and his/her material and social guarantees are ensured by the state, that the funds necessary for this must be provided for in the state budget, as well as that the financing of the President and of his/her residence must be regulated by means of laws;

– the constitutional requirements that the financing of the President and of his/her residence must be established by law, as well as that it is not permitted to establish any such a legal regulation that would deny the individual legal status of the President, which is different from the legal status of all other state officials, and would create the legal preconditions for equating some other person with the President, also mean that it is not permitted to establish any such a legal regulation that would create the legal preconditions for equating some other person with a former President;

– the provisions of Article 90 of the Constitution imply that the pension of the President is an inseparable element of the financing of the President and a constitutional social guarantee of the Head of State; under the Constitution, the legislature has the duty to establish such an amount of this pension and such conditions for its granting and payment that would be in line with the dignity of the President as the Head of State and his/her individual and exceptional legal status;

– the provisions of Article 90 of the Constitution also mean that the legislature is prohibited from establishing any such a legal regulation under which a person not elected as the President could receive the pension of the President;

– the legislature may, without violating the Constitution, establish the financing of a former President by taking account of the constitutional grounds upon which the powers of the President have ceased, as well as of the fact whether the same person has not been re-elected or elected anew as the President.

Thus, the individual and exceptional constitutional status of the President differs from the legal status of all other citizens, *inter alia*, in terms of the social guarantees of the President.

It should be noted that the provisions of the official constitutional doctrine that are related to the pension of the President, as an inseparable element of the financing of the President and a constitutional social guarantee of the Head of State, are equally applicable to other state payments that are provided for by law and correspond to the essence and purpose of the pension of the President, irrespective of how they are named.

In interpreting the provision of Article 90 of the Constitution that the financing of the President and of his/her residence is established by law, it should be pointed out that this provision consolidates the guarantee of the financing of the President and of his/her residence and that the purpose of this guarantee is to ensure that the President is able to properly perform his/her duties, *inter alia*, to properly represent the State of Lithuania. Thus, this constitutional guarantee means that the legislature has the duty to establish, by means of a law, the financing necessary to perform the duties of the President, which includes not only the financing of the activities and residence of an incumbent President, but also proper financing, i.e. which is in line with the dignity and exceptional legal status of the President as the Head of State, ensured for a former President, *inter alia*, the pension of the President or another state payment corresponding to the essence and purpose of this pension. This financing also includes the funds necessary to defray the expenses of the person (spouse, another family member) who accompanies the President under the state and/or diplomatic protocol where these expenses are incurred by the said person in relation to his/her assistance to the President while the President is performing his/her duties.

… the provisions of Article 90 of the Constitution do not regulate the legal status of the spouse of the President or his/her material (social) provision after the death of the President; however, social assistance for the spouse and other family members of the President is guaranteed on the basis of other provisions of the Constitution, *inter alia*, on the basis of social assistance provided for under Article 52 of the Constitution in the event of widowhood.

6.2. THE POWERS OF THE PRESIDENT OF THE REPUBLIC

The powers of the President of the Republic to sign international treaties and to submit them to the Seimas for ratification (Item 2 of Article 84 of the Constitution)

The Constitutional Court's ruling of 17 October 1995

Item 2 of Article 84 of the Constitution provides that the President of the Republic "shall sign international treaties of the Republic of Lithuania and submit them to the Seimas for ratification". These powers of the President of the Republic enable him/her to implement his/her general formal competence consolidated in Item 1 of Article 84 of the Constitution ("The President of the Republic: 1) shall decide the basic issues of foreign policy and, together with the Government, conduct foreign policy"). This also follows from the general status of the President of the Republic, which is established in Article 77 of the Constitution: he/she is the Head of State.

… this is not one combined power but, rather, two qualitatively independent powers: (1) to sign international treaties and (2) to submit international treaties signed either by the President of the Republic or by other authorised state officials to the Seimas for ratification. The crucial question here is whether only the President of the Republic has such rights, i.e. whether other state power institutions are prohibited from signing international treaties and submitting them to the Seimas for ratification.

The fact that the Prime Minister is entitled to sign international treaties can be derived from the constitutional provisions related to the powers of the Government in the sphere of foreign policy and international relationships. …

[…]

The provision that the President of the Republic shall "submit them to the Seimas for ratification" of Item 2 of Article 84 of the Constitution should be assessed in a different manner. The other articles of the Constitution, whereby the competence of state power institutions is defined, do not contain any such a provision that the Government or any other state power subject is entitled to submit international treaties to the Seimas for ratification. According to the Constitution as an integral legal act, the said right is within the prerogative of the President of the Republic.

The powers of the President of the Republic in the sphere of forming the Government

The Constitutional Court's ruling of 10 January 1998

The relationships between the President of the Republic and the Government are regulated by the norms of the Constitution that provide that the President of the Republic, on the assent of the Seimas, appoints the Prime Minister; the President of the Republic assigns the Prime Minister to form the Government and approves the composition of the formed Government. The President of the Republic, on the assent of the Seimas, releases the Prime Minister from duties; the President of the Republic accepts the powers returned by the Government after the election of a new Seimas and assigns the Government to exercise its duties until a new Government is formed, accepts the resignation of the Government and, where necessary, assigns it to continue to exercise its duties or assigns one of the ministers to exercise the duties of the Prime Minister until a new Government is formed. The President of the Republic, on the resignation of the Government or after it returns its powers, within 15 days, proposes the candidate for the post of the Prime Minister for consideration by the Seimas, etc.

… According to the constitutional tradition of Europe, the President appoints the person as the Head of the Government who is supported by the parliamentary majority. The said constitutional practice is also followed in Lithuania.

It appears from an analysis of the powers of the Seimas and those of the President of the Republic in the sphere of forming the Government that the main task of the activities of the President of the Republic in this process is to guarantee the interaction between the institutions of power. In the course of forming the Government, the President of the Republic should be bound by his/her duty to act, first of all, in such a way that an efficient Government is formed, i.e. the one that has the confidence of the Seimas.

Therefore, referring to the principles of parliamentary democracy, which are established in the Constitution, it should be presumed that the President of the Republic cannot freely choose candidates for the posts of the Prime Minister or ministers, since, in all cases, the appointment of the said officials depends on the confidence or no confidence expressed by the Seimas on this matter. At the same time, it is impossible to ignore the fact that the President of the Republic, as part of executive power, has certain possibilities of political influence on the formation of the personal structure of the Government.

[…]

After the new President of the Republic takes an oath, the powers of the former President of the Republic cease and, at the same time, the relationship of the Government ceases with the Head of State, who participated in its formation. The Constitutional Court, based on the analysis of constitutional norms, draws the conclusion that the Government must return its powers to the newly elected President of the Republic after he/she takes an oath and takes office.

… interpreting the norms of Articles 80 and 82 and Paragraph 4 of Article 92 of the Constitution, the Constitutional Court draws the conclusion that the powers of the Government should be returned to the President of the Republic on the same day when he/she takes office. This interpretation is based on the fact that the Constitution does not provide for any other time period.

[…]

After a new Seimas is elected, the President of the Republic, on the basis of Item 6 of Article 84 of the Constitution, accepts the powers returned by the Government and charges it with exercising its duties until a new Government is formed. Within 15 days, the President of the Republic proposes the candidate for the post of a new Prime Minister for consideration by the Seimas. The formation of a new Government is, thus, begun. …

After an election of the President of the Republic, the Government also returns its powers to the newly elected President of the Republic. However, the norms of the Constitution do not prescribe that the Government must resign in such a situation. This is due to the fact that, after a new Head of State takes office, the confidence of the Seimas in the Government remains intact. Therefore, in the case of the return of the powers after the election of a new President of the Republic, the same Government must be charged by the Head of State with continuing to exercise its functions. In the case of the resignation of the Government, the President of the Republic may charge another member of the Government with exercising the functions of the Prime Minister.

[…]

… It is clear from the analysis of the content of Articles 84, 92, and 101 of the Constitution that such a return of powers [after an election of the President of the Republic] does not imply the resignation of the Government. … Having returned its powers, the Government remains legitimate.

The procedure for the return of powers, however, is not merely an expression of interinstitutional courtesy: it provides the President of the Republic with the possibility of verifying whether the Seimas continues to have confidence in the Government. The President of the Republic, on the basis of Article 92 and Item 8 of Article 84 of the Constitution, taking account of the tradition of parliamentary democracy, under the procedure established in Item 8 of Article 84 of the Constitution, proposes the candidate for the post of the Prime Minister of the Government that has returned its powers for consideration by the Seimas. After the Seimas approves the candidate for the post of the Prime Minister and the President of the Republic appoints the Prime Minister, and after the composition of the Government proposed by the Prime Minister is approved, the Government once again receives its powers to act, unless more than half of the ministers are replaced.

If the Seimas does not approve the candidate for the post of the Prime Minister, the Government must resign (Item 2 of Paragraph 3 of Article 101 of the Constitution). This would constitute a constitutional ground for the procedure of beginning the formation of a new Government.

The powers of the President of the Republic in forming the judiciary (Item 11 of Article 84 and Article 112 of the Constitution)

The Constitutional Court's ruling of 21 December 1999

Item 11 of Article 84 of the Constitution provides that the President of the Republic: proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, upon the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints and releases the judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties.

The norms of Item 11 of Article 84 of the Constitution establishing the powers of the President of the Republic in the sphere of the appointment and release of judges are linked with Paragraph 5 of Article 112 of the Constitution, wherein it is prescribed that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties. …

Thus, the powers of the President of the Republic in the sphere of forming the judiciary are consolidated in Item 11 of Article 84 of the Constitution. This is an important element of the constitutional status of the Head of State. Any change of or any limitation on the powers of the President of the Republic in this sphere, as well as any establishment of such a procedure for the implementation of these powers where the actions of the President of the Republic would be bound by decisions of the institutions or officials that are not provided for in the Constitution, would mean changing the constitutional competence of the President of the Republic.

[…]

… the legislature has the right to establish the subjects that must choose the candidates for the posts of judges for the President of the Republic. This function may also be established for the Minister of Justice; however, the right of the Minister of Justice to choose the candidates for the posts of judges is not binding on the President of the Republic.

[…]

… the procedure for appointing judges as established in [the law] may not violate the independence of the judiciary. At the same time, this procedure may not violate the balance among the branches of state power (in the case at issue, the balance between the President of the Republic and the judiciary), as established in Article 5 of the Constitution.

[…]

Taking account of the procedure for the formation of courts that is established in the Constitution, as well as of the constitutional regulation of the relationships between the President of the Republic and a special institution of judges, the conclusion should be drawn that a special institution of judges, which is indicated in Paragraph 5 of Article 112 of the Constitution, must advise the President of the Republic on all questions of the appointment of judges, their professional career, as well as their release from duties. The advice given by this institution gives rise to legal effects: if this institution does not give advice, the President of the Republic may not adopt decisions on the appointment, promotion, and transfer of judges or their release from duties.

Thus, under the Constitution, such a special institution of judges not only helps the President of the Republic to form courts, but also serves as a counterbalance to the President of the Republic, who is a subject of executive power, in the sphere of forming the corps of judges. On the other hand, a special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution, should be interpreted as an important element of the self-governance of the judiciary, which is an independent branch of state power.

The powers of the President of the Republic related to the signing and official publication of laws

See 5. The Seimas, 5.5. The procedure of activities of the Seimas, 5.5.2. The legislation process; the ruling of 19 June 2002 (“The signing, official publication, and entry into force of laws”; “The powers of the President of the Republic, the Speaker of the Seimas, and the Deputy Speaker of the Seimas that are related to the signing and official publication of laws” (Articles 70 and 74, Item 24 of Article 84, Article 88, Paragraph 1 of Article 89, and Paragraphs 1 and 2 of Article 149 of the Constitution)).

The cessation of the powers of the President of the Republic (Article 88 of the Constitution)

The Constitutional Court’s ruling of 19 June 2002

… the list of the grounds for the cessation of the powers of the President of the Republic, which is established in Article 88 of the Constitution, is final and may not be interpreted in an expansive manner.

The constitutional right of the Speaker of the Seimas to temporarily carry out the duties of the President of the Republic (Items 3, 4, 5, and 6 of Article 88 and Paragraph 1 of Article 89 of the Constitution)

The Constitutional Court’s ruling of 19 June 2002

… the implementation of the constitutional right of the Speaker of the Seimas to temporarily carry out the duties of the President of the Republic is linked with the establishment of the particular legal fact, i.e. the establishment of one of the circumstances indicated in Paragraph 1 of Article 89 of the Constitution due to which the powers of the President of the Republic cease pursuant to Items 3, 4, 5, or 6 of Article 88 of the Constitution. In order for the legal effects to arise as pointed out in the Constitution, such a legal fact must be established by observing the proper legal procedure. The said legal fact means the following: that the act of the President of the Republic by which he/she announces his/her resignation from office has come into force (Item 3 of Article 88 of the Constitution); that the fact of the death of the President of the Republic has been established under the procedure provided for in laws (Item 4 of Article 88 of the Constitution); that the legal act of the Seimas has come into force by which the President of the Republic is removed from office by a 3/5 majority vote of all the members of the Seimas through impeachment proceedings, which are provided for in the Statute of the Seimas (Item 5 of Article 88 and Article 74 of the Constitution); or that the resolution adopted by a 3/5 majority vote of all the members of the Seimas, by taking into consideration the conclusion of the Constitutional Court according to which the state of health of the President of the Republic does not allow him/her to hold office, has come into force (Item 6 of Article 88 and Item 2 of Paragraph 3 of Article 105 of the Constitution).

Paragraph 2 of Article 77 of the Constitution provides that the President of the Republic represents the State of Lithuania and performs everything with which he/she is charged by the Constitution and laws. Thus, the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, performs everything with which the President of the Republic is charged by the Constitution and laws. Consequently, the Speaker of the Seimas has the powers to sign and officially promulgate laws passed by the Seimas within ten days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration.

It needs to be noted that the Speaker of the Seimas, if he/she temporarily holds the office of the President of the Republic, exercises the constitutional powers of the President of the Republic, but not those of the Speaker of the Seimas, because the Speaker of the Seimas temporarily loses his/her powers in such a situation. …

[…]

In the situations provided for in Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas holds the office of the President of the Republic until a new President of the Republic is elected and enters office. After the Speaker of the Seimas begins to temporarily hold the office of the President of the Republic, the Seimas must, within 10 days, call an election of the President of the Republic, which must be held within two months; if the Seimas cannot convene and call an election of the President of the Republic, the election is called by the Government (Paragraph 1 of Article 89 of the Constitution). After the newly elected President of the Republic enters office, the temporary duties of the Speaker of the Seimas to hold the office the President of the Republic end and he/she resumes the duties of the Speaker of the Seimas … . At this point, it is the newly elected President of the Republic who has the right of the official promulgation of laws passed by the Seimas and the right of a delaying veto.

In addition, such legal situations are possible where, even though one of the circumstances provided for in Paragraph 1 of Article 89 of the Constitution is present, but the respective legal fact is not established yet in accordance with the proper legal procedure (thus, it has not led to the respective legal effects). In such cases, the Speaker of the Seimas, under the Constitution, may not temporarily hold the office of the President of the Republic yet; thus, he/she does not have the temporary powers of the President of the Republic to sign and officially promulgate laws passed by the Seimas within 10 days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration. In this respect, in view of the circumstances indicated in Paragraph 1 of Article 89 and Items 3, 4, 5 and 6 of Article 88 of the Constitution, different legal situations are possible. For instance, if the resolution of the Seimas, adopted by taking into consideration the conclusion of the Constitutional Court and by a 3/5 majority vote of all the members of the Seimas, stating that the state of health of the President of the Republic does not allow him/her to continue to hold office has

not come into force (Item 6 of Article 88 and Item 2 of Paragraph 3 of Article 105 of the Constitution), or if the act of the President of the Republic by which he/she states about his/her resignation from office has not come into force (Item 3 of Article 88 of the Constitution), or if the legal act adopted by the Seimas on removing the President of the Republic from office by a 3/5 majority vote of all the members of the Seimas through impeachment proceedings, which are provided for in the Statute of the Seimas, has not come into force (Item 5 of Article 88 and Article 74 of the Constitution), the above-mentioned powers are still exercised by the President of the Republic. Until the establishment of the fact of the death of the President of the Republic under the procedure provided for in laws (Item 4 of Article 88 of the Constitution), no one may exercise the powers of the President of the Republic to sign and officially promulgate laws passed by the Seimas within 10 days of receiving them or, on reasonable grounds, to refer them back to the Seimas for reconsideration.

[…]

It needs to be emphasised that the phrase "the office shall temporarily be held by the Speaker of the Seimas", which is used in Paragraph 1 of Article 89 of the Constitution, and the phrase "the Speaker of the Seimas shall substitute for", which is used in Paragraph 2 of Article 89 of the Constitution, are not identical as far as their legal content is concerned. The phrase "the office shall temporarily be held by the Speaker of the Seimas" denotes such a legal situation where the powers of the President of the Republic have ceased, a new President of the Republic has not been elected, and the office of the President of the Republic is temporarily held by the Speaker of the Seimas; as long as he/she temporarily holds the office of the President of the Republic, the Speaker of the Seimas may not exercise his/her powers in the Seimas as the Speaker. Meanwhile, the phrase "the Speaker of the Seimas shall substitute for" denotes such a legal situation where the President of the Republic is temporarily abroad or has fallen ill and, for this reason, is temporarily unable to hold office and, due to this, the Speaker of the Seimas temporarily substitutes for the President of the Republic. While temporarily substituting for the President of the Republic, the Speaker of the Seimas retains his/her powers of the Speaker of the Seimas.

[…]

It needs to be emphasised that situations where the Speaker of the Seimas temporarily holds the office of the President of the Republic or temporary substitutes for him/her are possible only on the grounds indicated in Paragraphs 1 and 2 of Article 89 of the Constitution; the Speaker of the Seimas is the only state official who may temporarily hold the office of the President of the Republic or temporarily substitute for the President of the Republic. Paragraph 4 of Article 89 of the Constitution prescribes that, with the exception of the cases specified in this article, the powers of the President of the Republic may not be executed by any other persons or institutions.

The constitutional right of the Speaker of the Seimas to temporarily substitute for the President of the Republic (Paragraph 2 of Article 89 of the Constitution)

The Constitutional Court's ruling of 19 June 2002

Paragraph 2 of Article 89 of the Constitution provides that the Speaker of the Seimas substitutes for the President of the Republic when the President of the Republic is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office.

It needs to be emphasised that the phrase "the office shall temporarily be held by the Speaker of the Seimas", which is used in Paragraph 1 of Article 89 of the Constitution, and the phrase "the Speaker of the Seimas shall substitute for", which is used in Paragraph 2 of Article 89 of the Constitution, are not identical as far as their legal content is concerned. The phrase "the office shall temporarily be held by the Speaker of the Seimas" denotes such a legal situation where the powers of the President of the Republic have ceased, a new President of the Republic has not been elected, and the office of the President of the Republic is temporarily held by the Speaker of the Seimas; as long as he/she temporarily holds the office of the President of the Republic, the Speaker of the Seimas may not exercise his/her powers in the Seimas as the Speaker. Meanwhile, the phrase "the Speaker of the Seimas shall substitute for" denotes such a legal situation where

the President of the Republic is temporarily abroad or has fallen ill and, for this reason, is temporarily unable to hold office and, due to this, the Speaker of the Seimas temporarily substitutes for the President of the Republic. While temporarily substituting for the President of the Republic, the Speaker of the Seimas retains his/her powers of the Speaker of the Seimas.

The mere fact that the President of the Republic is temporarily abroad or falls ill may not serve as the sufficient constitutional grounds for the Speaker of the Seimas to temporarily substitute for the President of the Republic, because, despite fact that the President of the Republic is temporarily abroad or has fallen ill, he/she does not lose his/her legal status as the President of the Republic or the powers granted to him/her by the Constitution and laws. The Speaker of the Seimas temporarily substitutes for the President of the Republic only if there are both conditions provided for in Paragraph 2 of Article 89 of the Constitution: (1) the President of the Republic is temporarily abroad or falls ill; (2) for this reason, he/she is temporarily unable to hold office. Both these legal facts must be established in accordance with the proper legal procedure. To establish such a procedure by means of a law is a constitutional duty of the Seimas. …

It needs to be noted that the interpretation of the provision of Paragraph 2 of Article 89 of the Constitution as meaning that the fact that the President of the Republic is temporarily abroad or falls ill is the sufficient constitutional grounds for the Speaker of the Seimas to temporarily substitute for the President of the Republic would be constitutionally groundless. Such an interpretation of Paragraph 2 of Article 89 of the Constitution would create the preconditions for the situation where the Speaker of the Seimas who is temporarily substituting for the President of the Republic under Paragraph 2 of Article 89 of the Constitution could be seen as the Head of State, even though it is the President of the Republic who is the Head of State and the President of the Republic does not lose his/her legal status or the powers granted to him/her by the Constitution and laws even when he/she is temporarily abroad or falls ill. The President of the Republic is also the Head of State in cases where he/she is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office even though the Speaker of the Seimas is substituting for him/her at that time. Under the Constitution, even while temporarily substituting for the President of the Republic at the time when the President of the Republic is temporarily abroad or falls ill and, for this reason, is temporarily unable to hold office, the Speaker of the Seimas is not the Head of State, but the head of one of state institutions, i.e. the Seimas. In Lithuania, there is only one Head of State – the President of the Republic.

While temporarily substituting for the President of the Republic under Paragraph 2 of Article 89 of the Constitution, differently from the situation where he/she temporarily holds the office of the President of the Republic under Paragraph 1 of Article 89 of the Constitution, the Speaker of the Seimas may not exercise certain powers of the President of the Republic that are *expressis verbis* specified in the Constitution: Paragraph 3 of Article 89 of the Constitution provides that, while temporarily substituting for the President of the Republic, the Speaker of the Seimas may neither call an early election to the Seimas nor appoint or release ministers without the consent of the Seimas. Paragraph 3 of Article 89 of the Constitution also establishes a special guarantee for the Speaker of the Seimas temporarily substituting for the President of the Republic: during the said period, the Seimas may not consider the issue of no confidence in the Speaker of the Seimas.

It needs to be emphasised that situations where the Speaker of the Seimas temporarily holds the office of the President of the Republic or temporary substitutes for him/her are possible only on the grounds indicated in Paragraphs 1 and 2 of Article 89 of the Constitution; the Speaker of the Seimas is the only state official who may temporarily hold the office of the President of the Republic or temporarily substitute for the President of the Republic. Paragraph 4 of Article 89 of the Constitution prescribes that, with the exception of the cases specified in this article, the powers of the President of the Republic may not be executed by any other persons or institutions.

The veto right of the President of the Republic (Paragraph 1 of Article 71 of the Constitution)

The Constitutional Court's ruling of 19 June 2002

The President of the Republic … has the right not to sign a law adopted by the Seimas and, within ten days of receiving such a law, on reasonable grounds, to refer it back to the Seimas for reconsideration (Paragraph 1 of Article 71 of the Constitution), i.e. he/she has the right of a delaying veto. The Constitution does not provide that the President of the Republic has the right of a delaying veto in connection with laws passed by referendum or in connection with laws amending the Constitution. Under the Constitution, the President of the Republic has such a right only with regard to laws adopted by the Seimas, with the exception of laws amending the Constitution. While implementing the right of a delaying veto, the President of the Republic may also submit proposals how a law adopted by the Seimas, but not yet signed by the President of the Republic, should be amended or supplemented.

[…]

Under Article 85 of the Constitution, the President of the Republic, implementing the powers vested in him/her, issues acts-decrees. Under Paragraph 1 of Article 71 of the Constitution, when referring a law passed by the Seimas, within ten days of receiving such a law, back to the Seimas for reconsideration, the President of the Republic must indicate, in his/her decree, the relevant reasons why the law was referred back to the Seimas. Meanwhile, to propose draft amendments and supplements to a law referred back to the Seimas for reconsideration is not a constitutional duty of the President of the Republic, but his/her constitutional right.

The powers of the President of the Republic in the legislative process

The Constitutional Court's ruling of 22 February 2008

Under the Constitution, in addition to the Seimas, the President of the Republic also takes part in the legislative process. For instance, the President of the Republic signs and officially announces (promulgates) laws enacted by the Seimas and also has the right of a delaying (relative) veto, i.e. the powers to refer a law adopted by the Seimas back to the Seimas for reconsideration; this is an important aspect of the constitutional principle of the separation of powers and an additional guarantee for the constitutionality of laws adopted by the Seimas (rulings of 19 January 1994 and 19 June 2002). The President of the Republic has the right not to sign a law adopted by the Seimas and, within ten days of receiving such a law, on reasonable grounds, to refer it back to the Seimas for reconsideration (Paragraph 1 of Article 71 and Item 2 of Article 84 of the Constitution); the respective decree of the President of the Republic must specify the reasons why such a law was referred back to the Seimas (Paragraph 1 of Article 71 and Article 85 of the Constitution); the Seimas may consider anew and adopt a law referred back by the President of the Republic (Paragraph 1 of Article 72 of the Constitution); the law reconsidered by the Seimas is deemed adopted if the amendments and supplements submitted by the President of the Republic are adopted, or if more than 1/2 of all the members of the Seimas vote for the law or, in cases where such a law is a constitutional law, if not less than 3/5 of all the members of the Seimas vote in favour thereof (Paragraph 2 of Article 72 of the Constitution); the President of the Republic must sign such laws within three days and promulgate them immediately (Paragraph 3 of Article 72 of the Constitution).

In its ruling of 19 June 2002, when interpreting the constitutional powers of the President of the Republic in the legislative process, the Constitutional Court held that it is the constitutional duty of the President of the Republic to perform, within ten days of receiving a law passed by the Seimas, one legal action from among those specified in Paragraph 1 of Article 71, Item 24 of Article 84, and Paragraph 2 of Article 71 of the Constitution: either to sign and officially promulgate a law passed by the Seimas (right of promulgation) or, on reasonable grounds, to refer it back to the Seimas for reconsideration (right of a delaying veto). In the said ruling of the Constitutional Court, a situation is discussed in more detail where the President of the Republic, even though he/she has the constitutional duty within ten days of receiving a law passed by the Seimas to sign and officially promulgate it (right of promulgation) or, on reasonable

grounds, to refer such a law back to the Seimas for reconsideration (the right of delaying veto), due to some reasons, neither signs and officially promulgates the said law passed by the Seimas nor makes use of the right of a delaying veto.

The veto right of the President of the Republic (Paragraph 1 of Article 71 of the Constitution) (on the powers of the Seimas that are related to adopting a law vetoed by the President of the Republic, see 5. The Seimas, 5.5. The procedure of activities of the Seimas, 5.5.2. The legislation process)

The Constitutional Court's ruling of 22 February 2008

When interpreting the provision "Within ten days of receiving a law adopted by the Seimas, the President of the Republic … shall, upon reasonable grounds, refer it back to the Seimas for reconsideration" of Paragraph 1 of Article 71 of the Constitution, it needs to be noted that the President of the Republic may, in the respective decree, specify various grounds – not only legal, but also economic, political, moral, those of expediency, or those that are related to the international obligations of the State of Lithuania, etc. … these grounds do not necessarily have to be linked with the content of the respective law; they may, in the opinion of the President of the Republic, be also linked with the infringements committed during the procedure of adopting the said law, *inter alia*, with the fact that, while adopting that law, the Seimas did not follow the stages of the legislation process or the rules of legislation that are laid down in the Constitution and/or the Statute of the Seimas. In such cases, the President of the Republic, while making use of the right of a delaying veto, which is granted to him/her by the Constitution, does not allow such a law to take effect where, in his/her opinion, the said law may be in conflict with the procedure, laid down in the Constitution, for adopting it.

It needs to be emphasised that the reasons of the President of the Republic, on the basis of which a law adopted by the Seimas is referred back to it for reconsideration, must be rational, clear, and comprehensible. The President of the Republic, while referring, on reasonable grounds, a law back to the Seimas for reconsideration, must follow the imperatives of the welfare of the Nation, responsible governance, civic consciousness, social harmony, justice, the supremacy of law, as well as other values, which are consolidated, defended, and protected by the Constitution. However, the mere fact that the reasons of the President of the Republic, on the basis of which a law adopted by the Seimas is referred back to it for reconsideration, could be assessed by someone (*inter alia*, members of the Seimas) as unfair, may not be a pretext for questioning the constitutionality of the respective decree of the President of the Republic (or for questioning such constitutionality by initiating a constitutional justice case at the Constitutional Court).

In this context, it needs to be emphasised that, if the Seimas does not agree with the reasons of the President of the Republic on the basis of which a certain law adopted by the Seimas is referred back to it for reconsideration after the President of the Republic uses his/her constitutional right of a delaying veto, the Seimas, under Paragraph 2 of Article 72 of the Constitution, may override such a veto of the President of the Republic. Under the Constitution, the veto exercised by the President of the Republic as regards laws adopted by the Seimas is relative; such a veto is not absolute.

While making use of the right of a delaying veto, the President of the Republic may also submit proposals to the Seimas how a law adopted by the Seimas, but not yet signed by the President of the Republic, should be amended or supplemented; such amendments or supplements have to be specified in the decree of the President of the Republic whereby a law adopted by the Seimas is, on reasonable grounds, referred back to the Seimas for reconsideration. The Constitutional Court has held that to propose draft amendments and supplements to a law referred back to the Seimas for reconsideration is not a constitutional duty of the President of the Republic, but his/her constitutional right (ruling of 19 June 2002).

A different interpretation, i.e. the interpretation that, purportedly, the President of the Republic, while referring, on reasonable grounds, a law adopted by the Seimas back to the Seimas for reconsideration, must, in all cases, submit proposals to the Seimas on how this law should be amended or supplemented, would mean that the President of the Republic is forced to propose amendments and supplements even to such laws of which he/she does not approve in general and to which he/she objects not because of the fact that those

laws include certain provisions with which the President of the Republic does not agree and which, in his/her opinion, should be modified, but because of the fact that, in the opinion of the President of the Republic, the said law as such is inadmissible in principle as it is inexpedient, unreasonable, harmful, etc. When the President of the Republic does not submit any amendments or supplements to a law that is referred, on reasonable grounds, back to the Seimas for reconsideration, he/she does not act *ultra vires*.

The powers of the President of the Republic in forming the judiciary (Item 11 of Article 84 and Article 112 of the Constitution) (on the formation of courts, see 9.1. Courts, 9.1.4. The constitutional status of judges. The appointment of judges, their professional career, and their release from duties. The judicial self-governance institutions)

The Constitutional Court's decision of 15 May 2009

The Constitution establishes such a procedure of the appointment and release of the judges and presidents of courts of general jurisdiction and specialised courts of various levels whereby the judges and presidents of the said courts are appointed and released by the institutions of other branches of state power – executive power and legislative power; thus, they are appointed and released, respectively, by the President of the Republic and the Seimas, i.e. the institutions that are formed on a political basis.

In its rulings of 21 December 1999, 9 May 2006, and 27 November 2006, the Constitutional Court held the following: the powers of the President of the Republic consolidated in Item 11 of Article 84 of the Constitution regarding the formation of the judiciary are a significant element of the constitutional status of the Head of State; changing or limiting the specified powers of the President of the Republic in this sphere, as well as the establishment of such a procedure for implementing these powers so that the President of the Republic would be bound by decisions adopted by the institutions or officials that are not provided for in the Constitution, would mean changing the constitutional competence of the President of the Republic. Also, any change in or restriction on the powers of a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution, to advise the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties would mean a change in the purpose (stemming from the Constitution itself) of a special institution of judges, which is provided for by law and is specified in Paragraph 5 of Article 112 of the Constitution (rulings of 9 May 2006 and 27 November 2006).

The President of the Republic participates (in the ways established in Paragraphs 2, 3, and 4 of Article 112 and Item 11 of Article 84 of the Constitution) in appointing and releasing the judges of courts of general jurisdiction of all levels: from the lowest level – district courts to the highest level – the Supreme Court (also in appointing and releasing the judges of all specialised courts); however, the powers of the President of the Republic with respect to the judges of different courts of general jurisdiction are different. The judges and presidents of district, regional, and specialised courts are appointed and released by the President of the Republic and, regarding this, he/she does not apply to the Seimas. Item 11 of Article 84 of the Constitution provides, *inter alia*, that the President of the Republic: proposes candidates for the posts of the justices of the Supreme Court for consideration by the Seimas and, on the appointment of all the justices of the Supreme Court, proposes the candidate from among them for the post of the President of the Supreme Court to be appointed by the Seimas; appoints the judges of the Court of Appeal and, from among them, the President of the Court of Appeal, provided that the Seimas gives its assent to the candidates proposed; appoints the judges and presidents of regional and district courts and changes their places of work; in cases provided for by law, submits that the Seimas release judges from their duties.

As noted in the Constitutional Court's rulings of 9 May 2006 and 21 September 2006, in order to appoint or release a judge or the President of the Court of Appeal, the President of the Republic must apply to the Seimas and, if the Seimas gives its assent, he/she may appoint a certain person as a judge or the President of the Court of Appeal or release a certain judge or the President of the Court of Appeal from duties; also, *inter alia*, if certain circumstances significant for such appointment or release from duties come to light, he/she might decide not to appoint that person as a judge or the President of the Court of Appeal

and to propose another candidate to the Seimas, or not to release a certain judge or the President of the Court of Appeal from duties (if it is not obligatory to release that judge from duties under the Constitution).

Paragraph 5 of Article 112 of the Constitution provides that a special institution of judges, as provided for by law, advises the President of the Republic on the appointment, promotion, and transfer of judges or their release from duties.

The Constitutional Court interprets the aforesaid special institution of judges, which is provided for in the Constitution, as an important element of the self-governance of the judiciary, which is an independent branch of state power; in the regulation of the relationships linked with the appointment, promotion, and transfer of judges or their release from duties, it is not allowed to deny the competence of the indicated special institution of judges or its constitutional nature and purpose; in the area of the formation of the corps of judges, this special institution of judges is a counterbalance to the President of the Republic as a subject of executive power (rulings of 21 December 1999, 13 December 2004, and 9 May 2006). The fact that the judiciary is fully fledged, autonomous, and independent, as well as the constitutional principle of the separation of powers, makes it impossible to interpret the constitutional purpose and functions of the said special institution of judges in such a way that its role as a counterbalance to the President of the Republic in the area of the formation of the corps of judges would be denied or ignored (ruling of 9 May 2006).

[…]

… Article 115 of the Constitution also provides for such grounds for releasing a judge from duties that are linked with facts of an objective nature, but not with the free decision of such a judge, as, for instance, the expiry of the term of powers of a judge for which he/she was appointed to hold the office of a judge or that of the president of a certain court. When there is such a constitutional ground for releasing a justice or the President of the Supreme Court from duties, the President of the Republic must ascertain whether the said fact of an objective nature really exists, i.e. whether the term of powers of the justice or the President of the Supreme Court, as established by law, has expired and, if the term of powers has expired, the President of the Republic must apply to a special institution of judges, which is provided for in Paragraph 5 of Article 112 of the Constitution, in order that this institution would advise him/her on releasing such a justice or the President of the Supreme Court from duties, because the term of powers of the said justice or the President of the Supreme Court has expired. In its turn, however, the said special institution of judges must ascertain whether the said fact of an objective nature really exists (i.e. whether the term of powers of a justice or the President of the Supreme Court, as established by law, has expired), and, if such a fact exists, it must advise the President of the Republic to release the justice or the President of the Supreme Court from duties. On receiving such an advice from the aforementioned special institution of judges, the President of the Republic must submit that the Seimas release the person concerned from duties.

The powers of the President of the Republic to appoint state officials and to release them from duties (Item 10 of Article 84 of the Constitution)

The Constitutional Court's ruling of 13 May 2010

Item 10 of Article 84 of the Constitution provides that the President of the Republic shall, according to the established procedure, appoint and release state officials provided for by law.

… the powers of the President of the Republic that are consolidated in Item 10 of Article 84 of the Constitution mean that the legislature is allowed to determine which state officials are appointed and released by the President of the Republic; in addition, the said powers of the President of the Republic mean that the legislature must establish the grounds for appointing such officials and releasing them from duties. Under Item 10 of Article 84 of the Constitution, the requirements (*inter alia*, the requirements of an ethical and moral nature) for the state officials who are appointed by the President of the Republic must be established in laws: the reputation of state officials must be impeccable; the conduct of state officials, both related to the direct performance of their duties and related to their activities not connected with their duties, must not discredit the name of state officials and the authority of a state institution wherein they perform their duties.

It needs to be held that the President of the Republic, while implementing the powers consolidated in Item 10 of Article 84 of the Constitution to appoint state officials provided for by law, may choose (by following the requirements set out in laws for state officials who are appointed by him/her) which person should be appointed as a state official; meanwhile, on a proposal, according to the established procedure, from certain institutions or officials that a certain person be appointed as a state official, the President of the Republic may decide whether the said person is suitable for the respective office of a state official in cases where a law prescribes that the President of the Republic appoints individuals to such office. The legislature, while establishing the grounds for releasing the said state officials from duties, must pay regard to the constitutional principle of a state under the rule of law, whereby, *inter alia*, state officials who violate the Constitution and laws, who raise personal or group interests above public interests, and discredit state power by their actions must be held legally liable in accordance with the procedure established by law. The Constitution does not tolerate any such legal and factual situations where those state officials and other persons adopting decisions important to society and the state who, in accordance with the established procedure, are declared not to have avoided a conflict between public and private interests or who are declared to have acted by seeking objectives incompatible with public interests, have raised personal or group interests above the interests of society and the state, and have discredited the name of officials by their actions, would not be held legally liable, *inter alia*, would not be released from duties.

Item 10 of Article 84 of the Constitution also means that the President of the Republic, while appointing and releasing the state officials that are provided for by law, must comply with the grounds laid down in laws for releasing state officials from duties and with the procedure, established in laws and/or other legal acts, for appointing state officials and releasing them from duties. The same requirements also arise from Paragraph 2 of Article 5 of the Constitution, wherein it is prescribed that the scope of powers is limited by the Constitution, from Paragraph 2 of Article 77 of the Constitution, wherein it is prescribed, *inter alia*, that the President of the Republic performs everything with which he/she is charged by the Constitution and laws, as well as from the constitutional principle of a state under the rule of law, which implies the hierarchy of legal acts.

The powers of the President of the Republic to confer state awards (Item 22 of Article 84 of the Constitution) (for more on state awards, see 4. The state and its institutions, 4.5. State awards)

The Constitutional Court's ruling of 7 September 2010

The foundations of the constitutional institution of state awards are consolidated, *inter alia*, in … Item 22 of Article 84 of the Constitution.

[…]

Item 22 of Article 84 of the Constitution provides that the President of the Republic confers state awards.

When interpreting the power of the President of the Republic to confer state awards, which is consolidated in Item 22 of Article 84 of the Constitution, in conjunction with the provisions "The President of the Republic, implementing the powers vested in him, shall issue acts-decrees. To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister" of Article 85 of the Constitution, it needs to be held that, under the Constitution, the President of the Republic confers state awards (which are established by means of a law passed by the Seimas) by issuing decrees, whose power is not bound by the approval of the Prime Minister or the respective minister.

The content of the constitutional institution of state awards is revealed to a certain extent in the Constitutional Court's ruling of 12 May 2006. *Inter alia*, the following is held in the said ruling of the Constitutional Court:

[…]

– conferring a certain state award is not the implementation of a right or legitimate expectation of a person, even if he/she is of undoubted merit to Lithuania, but rather such an assessment of his/her merit where the said assessment is within the discretion of and depends on the will of the President of the Republic;

– the President of the Republic has rather broad freedom of the discretion to decide whether or not to award a proposed person. It should be stressed that the Constitution does not oblige the President of the Republic to confer a certain state award on a certain person or persons (in recognition of their certain merit); however, when conferring state awards, the President of the Republic must pay regard, *inter alia*, to the requirements for fulfilling conscientiously the duties of his/her office and for being equally just to all, as established in Article 82 of the Constitution.

… the constitutional institution of state awards is related to a certain extent with the power of the President of the Republic, which is consolidated in Item 1 of Article 84 of the Constitution, to decide the basic issues of foreign policy.

As held in the Constitutional Court's ruling of 12 May 2006, according to international customs, the diplomatic protocol, i.e. according to the established international practice, state awards can be conferred on citizens of foreign states (*inter alia*, on Heads of States and high-ranking officials) by paying a special tribute to their state and to them and by seeking to develop mutually beneficial relationships between Lithuania and other states.

[…]

… the legislature, when establishing the procedure for how submissions are made that persons be conferred state awards, cannot deny the power of the President of the Republic, which is consolidated in Item 22 of Article 84 of the Constitution, to confer state awards.

The legislature, in regulating the relationships connected with the procedure for conferring state awards, *inter alia*, when consolidating the powers of the respective subjects (*inter alia*, ministers) to submit (present) that certain persons be awarded state awards, or when establishing the procedure for the consideration of the issues of conferring state awards in certain institutions, may not establish any such a legal regulation that would deny the power of the President of the Republic, which stems from Item 22 of Article 84 of the Constitution, to confer state awards.

Any change of or any limitation on the powers of the President of the Republic in this sphere, as well as any establishment of such a procedure for the implementation of these powers whereby the actions of the President of the Republic would be bound by decisions of the institutions or officials that are not provided for in the Constitution, would mean changing the constitutional competence of the President of the Republic.

[…]

… the President of the Republic, when he/she confers state awards, is also bound by the constitutional principle of responsible governance.

[…]

… the President of the Republic, when implementing the power to confer state awards, which is consolidated in Item 22 of Article 84 of the Constitution, and when, due to this, issuing a decree, is bound by the requirement, arising from the constitutional principle of a state under the rule of law, that, *inter alia*, it is allowed to confer only such state awards that are established by means of a law.

The powers of the President of the Republic in the sphere of national defence (Item 16 of Article 84 and Paragraph 2 of Article 142 of the Constitution); the powers of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State (Paragraph 2 of Article 140 of the Constitution) (for more on national defence, see 13. Foreign policy and national defence, 13.2. National defence)

The Constitutional Court's ruling of 15 March 2011

Article 84 of the Constitution consolidates the list of the constitutional powers of the President of the Republic; Item 16 of this article provides that "The President of the Republic … shall, in the event of an armed attack threatening the sovereignty of the State or its territorial integrity, adopt decisions concerning

defence against the armed aggression, the imposition of martial law, as well as mobilisation, and submit these decisions for approval at the next sitting of the Seimas".

The powers of the President of the Republic consolidated in Item 16 of Article 84 of the Constitution are particularised in Paragraph 2 of Article 142 of the Constitution, wherein it is established: "In the event of an armed attack threatening the sovereignty of the State or its territorial integrity, the President of the Republic shall immediately adopt a decision on defence against the armed aggression, impose martial law throughout the State or in its separate part, or announce mobilisation, and submit these decisions for approval at the next sitting of the Seimas, or immediately convene an extraordinary session in the period between sessions of the Seimas. The Seimas shall approve or overrule the decision of the President of the Republic."

… under the legal regulation established in Paragraph 2 of Article 142 of the Constitution, in the event of an armed attack that threatens the sovereignty of the state or its territorial integrity, a decision immediately adopted by the President of the Republic on defence against the armed aggression, on the imposition of martial law throughout the state or in its separate part, or on the announcement of mobilisation acquires legal force from the moment of its adoption; however, the President of the Republic must submit this decision for approval at the next sitting of the Seimas (in the period between sessions of the Seimas, an extraordinary session of the Seimas must immediately be convened for this purpose), whereas the Seimas has the right to approve or overrule the decision of the President of the Republic.

In this context, it needs to be noted that Paragraph 2 of Article 140 of the Constitution, wherein it is prescribed that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, gives rise to the specific constitutional powers of the President of the Republic that are related, *inter alia*, with those established in Paragraph 2 of Article 142 of the Constitution. Under the Constitution, *inter alia*, the provision of Paragraph 2 of Article 5 thereof, whereby the scope of powers is limited by the Constitution, these specific constitutional powers of the President of the Republic, as the Commander-in-Chief of the Armed Forces of the State, may not be granted to any other subject by means of a law or another legal act.

Under Paragraph 2 of Article 77 of the Constitution, the President of the Republic performs everything with which he/she is charged by the Constitution and laws.

Thus, the list of the constitutional powers of the President of the Republic, as consolidated in Article 84 of the Constitution, is not a final one.

Consequently, the legislature may also establish such powers of the President of the Republic that, though not *expressis verbis* specified in the Constitution, are in line with the constitutional legal status of the President of the Republic as the Commander-in-Chief of the Armed Forces of the State.

[…]

… under the Constitution, *inter alia*, Article 140 thereof, in the course of deliberating and deciding on national defence issues, various state institutions and officials take part, *inter alia*, the State Defence Council, which considers and coordinates the main issues of state defence (and which consists of the President of the Republic, the Prime Minister, the Speaker of the Seimas, the Minister of National Defence, and the Commander of the Armed Forces), as well as the Government, the Minister of National Defence, and the Commander of the Armed Forces, who are responsible to the Seimas for managing and commanding the armed forces of the state; however, decisions on the main issues of national defence are taken by two state institutions: the Seimas and the President of the Republic. The Seimas is empowered to adopt final decisions on the imposition of martial law, on the announcement of mobilisation and demobilisation, and on the adoption of the decision to use the armed forces when the need arises to defend the Homeland or to fulfil the international obligations of the State of Lithuania; whereas the President of the Republic, in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, has the powers to immediately adopt such decisions (concerning defence against the armed aggression, the imposition of martial law throughout the state or in its separate part, and the announcement of mobilisation) that are submitted for approval at the next sitting of the Seimas.

[…]

… laws may not establish any such powers of the President of the Republic that would deny the constitutional powers of other state institutions …

[…]

… when the law provides for ensuring the independence and security of the state on the international scale (level), it is necessary to pay regard, *inter alia*, to the rule, established in Article 142 of the Constitution, according to which two state institutions are constitutionally empowered to adopt decisions on the main issues of national defence, i.e. the Seimas adopts final decisions, whereas the President of the Republic immediately (in the event of a threat) adopts such decisions that are submitted for approval at the next sitting for the Seimas. While paying regard to this rule of the delimitation and coordination of the powers of the Seimas and the President of the Republic in the area of national defence, which is consolidated in Article 142 of the Constitution, the legislature, under Paragraph 2 of Article 140 of the Constitution, wherein it is stipulated that the President of the Republic is the Commander-in-Chief of the Armed Forces of the State, may also establish a legal regulation under which the President of the Republic would be empowered to immediately adopt a decision on defence against armed aggression not only in the event of an armed attack threatening the sovereignty of the state or its territorial integrity, as provided for in Item 16 of Article 84 and Paragraph 2 of Article 142 of the Constitution, but also in the event (as provided for in a collective defence treaty ratified by the Seimas) of an armed attack against the Republic of Lithuania and a state that is its ally in cases where such a decision must immediately be submitted for approval at the next sitting of the Seimas.

6.3. THE LEGAL ACTS OF THE PRESIDENT OF THE REPUBLIC

The legal acts of the President of the Republic and the countersigning of such acts (Article 85 of the Constitution)

The Constitutional Court's ruling of 30 December 2003

The phrase "the decrees issued by the President of the Republic" of the provision "To be valid, the decrees issued by the President of the Republic" of Article 85 of the Constitution means that a decree issued by the President of the Republic becomes a legal act only after it is signed by the President of the Republic. As long as the President of the Republic has not done so, there are no legal grounds for stating that the President of the Republic has issued a decree. As long as a document entitled as a decree of the President of the Republic has not been signed, such a document is only a draft decree of the President of the Republic, but not a decree itself. It needs to be noted that the Constitution does not provide that the draft decrees of the President of the Republic could and should be signed by the Prime Minister or a certain minister before such draft decrees are signed by the President of the Republic. If laws or other legal acts established such a legal regulation under which the draft decrees of the President of the Republic must be signed by the Prime Minister or a minister before they are signed by the President of the Republic, the legal acts establishing such a legal regulation would be in conflict with the Constitution.

Thus, under Article 85 of the Constitution, the Prime Minister or an appropriate minister signs decrees issued by the President of the Republic, i.e. legal acts entitled as the decrees of the President of the Republic that have already been signed by the President of the Republic.

The provision "To be valid, the decrees issued by the President of the Republic … must be signed by the Prime Minister or an appropriate Minister" of Article 85 of the Constitution means that, as long as a decree of the President of the Republic of Lithuania is not signed by the Prime Minister or an appropriate minister, such a decree cannot come into force; thus, such a decree cannot give rise to any legal effects.

Consequently, the said provision of Article 85 of the Constitution establishes an additional condition under which the decrees of the President of the Republic specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution can give rise to legal effects: such decrees must be signed by the Prime Minister or an appropriate minister. In the legal theory, such signing is called countersigning.

Paragraph 1 of Article 5 of the Constitution, which provides which state institutions execute state power, also indicates that "the President of the Republic and the Government" execute state power. Under the Constitution, the President of the Republic is part of executive power (ruling of 10 January 1998). Article 84 of the Constitution and other articles of the Constitution provide for various powers of the President of the Republic. Implementing such powers, the President of the Republic issues decrees. Most of the decrees issued by the President of the Republic, under the Constitution, are not signed by the Prime Minister or a minister: under the Constitution, the Prime Minister or an appropriate minister signs only the decrees specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution. Such a constitutional regulation means that the powers of the President of the Republic that are specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution are considered an especially important area of executive power; therefore, under the Constitution, the President of the Republic alone cannot exercise the said powers without the approval of an appropriate member of the Government. Such a constitutional regulation reflects the consolidation of the system of "checks and balances" in the implementation of executive power.

While revealing the content of the provision "To be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate Minister", it should be noted that it is impossible to interpret the said provision in isolation from another provision established in the same article, i.e. the provision "Responsibility for such a decree shall lie with the Prime Minister or the Minister who signs it".

In view of the fact that responsibility for the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution lies with the Prime Minister or the minister who signed it, the conclusion should be drawn that, under Article 85 of the Constitution, the Prime Minister or an appropriate minister has the right to decide whether or not to sign a certain decree of the President of the Republic. The Prime Minister or an appropriate minister is not obliged to sign such a decree that is issued in disregard of the Constitution or in failure to follow the procedure established in the respective laws or other established requirements; otherwise, the Prime Minister or an appropriate minister would be responsible for actions that he/she would have to perform without having any choice, i.e. irrespective of his/her will. The aforesaid legal regulation is not allowed in a democratic state under the rule of law, since it would not be in line with the principles of a state under the rule of law and justice, on which the Lithuanian Constitution and the entire Lithuanian legal system are based.

The right and duty of the Prime Minister or an appropriate minister to decide whether or not to sign the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution give rise to the duty of the Prime Minister or an appropriate minister, before they sign such a decree of the President of the Republic, to ascertain whether this decree of the Republic of Lithuania has been issued according to the Constitution and in line with the procedure established in the respective laws and other established requirements. It is because of the said duty of the Prime Minister or an appropriate minister that responsibility for such a decree of the President of the Republic lies, under Article 85 of the Constitution, with the Prime Minister or an appropriate minister.

Thus, the legal regulation established in Article 85 of the Constitution, according to which, to be valid, the decrees issued by the President of the Republic for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution must be signed by the Prime Minister or an appropriate minister, consolidates the right and duty of the Prime Minister and an appropriate minister to participate in the implementation of the powers of the President of the Republic that are specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution, as well as the right and duty of the Prime Minister and an appropriate minister to ensure that such a decree of the President of the Republic that has been issued in disregard of the Constitution or the requirements established in laws and the established procedure would not come into force. This is a counterbalance to the decisions of the President of the Republic in cases where such decisions disregard the requirements set in the Constitution and laws and where the powers of the President of the Republic, which are established in the Constitution and laws, are abused. On the other hand, the fact that responsibility for a decree of the President of the Republic lies not with the President of the Republic himself/herself, but with

the Prime Minister or an appropriate minister, is based on the provision that the President of the Republic, while in office, is not responsible for his/her decisions, save the cases directly established in the Constitution, i.e. for such decisions by which the President of the Republic grossly violates the Constitution, breaches the oath, or commits a crime. In such cases, the issue of the constitutional responsibility of the President of the Republic is decided (Article 74 of the Constitution).

[…]

It needs to be noted that the legal regulation established in Article 85 of the Constitution gives rise to the duty of [the respective minister] to ascertain, before signing a decree of the President of the Republic on granting citizenship or a decree of the President of the Republic on granting citizenship by way of exception, whether such a decree of the President of the Republic has been issued by paying regard to the Constitution and on the grounds for citizenship acquisition that are established in [the law] and in compliance with the procedure for granting citizenship, as established in [the law]. Under Article 85 of the Constitution, responsibility for such a decree of the President of the Republic lies with [the minister] who has signed it.

[…]

In view of the fact that, under Articles 86 and 74 of the Constitution, the President of the Republic who grossly violates the Constitution or breaches his/her oath, or is found to have committed a crime, may be held constitutionally liable – he/she may be removed from office through impeachment proceedings, the conclusion should be drawn that the provision "Responsibility for such a decree shall lie with the Prime Minister or the Minister who signs it" of Article 85 of the Constitution cannot be interpreted as meaning that the President of the Republic is not responsible in all cases for the decrees issued by him/her for the purposes specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution where the said decrees were signed by the Prime Minister or an appropriate minister.

When Articles 85, 86, and 74 of the Constitution are interpreted in a systemic manner, the conclusion should be drawn that responsibility for a decree specified in Items 3, 15, 17, and 21 of Article 84 of the Constitution in cases where, by such a decree, Constitution is grossly violated, or the oath is breached, or a crime is committed lies not only with the Prime Minister or the minister that countersigned such a decree, but also with the President of the Republic who has issued such a decree.

At the same time, it should be noted that, as such, the mere fact that a certain decree of the President of the Republic is declared in conflict with the Constitution or a law does not mean that the President of the Republic has grossly violated the Constitution, or breached the oath, or committed a crime. Deciding whether the President of the Republic, having issued a decree that is in conflict with the Constitution or a law, has grossly violated the Constitution, or breached the oath, or committed a crime, it is necessary to assess not only the content of the decree of the President of the Republic, but also whether, in the course of issuing the decree of the President of the Republic, the requirements established in the Constitution and the relevant laws were fulfilled and whether the established procedure was followed; in addition, it is also necessary to assess other factual circumstances surrounding the issuance of such a decree.

[…]

Legal acts passed by the President of the Republic are substatutory legal acts; therefore, they, as all other substatutory legal acts, may not be in conflict with the Constitution, constitutional laws, and laws.